(2)

No. 88-1140

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ROBERT W. LUDWIG, JR.,
Petitioner,

v.

EVERGREEN OVERLOOK, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland

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BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Did the Maryland Court of Special Appeals abuse its discretion or deny petitioner due process or equal protection of the law, provided by the U.S. Constitution, when it dismissed petitioner's appeal for failure to comply with a Maryland Rule which mandates that the pleadings be included in an extract where they are material to the determination sought on appeal?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING WRIT	4
I. THE MARYLAND COURT OF SPECIAL APPEALS DID NOT ABUSE ITS DISCRETION	4
II. THE MARYLAND COURT OF SPECIAL APPEALS DID NOT VIOLATE THE DUE PROCESS OR THE EQUAL PROTECTION CLAUSES OF THE CONSTITUTION BY DISMISSING PETITIONER'S APPEAL	8
CONCLUSION	13

TABLE OF AUTHORITIES

CASES — Page

Ackerman v. U.S., 340 U.S. 193, 71 S. Ct. 209 (1950) 7, 9, 10
A.S. Abell Co. v. Skeen, 265 Md. 53, 288 A.2d 596 (1972) 6
B&K Rentals & Sales Co., Inc. v. Universal Leaf Tobacco Co., et al., 535 A.2d 492, 73 Md. App. 530 (1988) 11, 12
Bornstein v. State Tax Commission, 227 Md. 331, 176 A.2d 859 (1962) 5, 7, 9
Caroline v. Reicher, 269 Md. 125, 304 A.2d 831, 837 (1973) 6
District of Columbia v. Clawans, 300 U.S. 617, 57 S. Ct. 660 (1937) 8
Eldwick Homes Association, Inc. v. Pitt, 36 Md. App. 211, 373 A.2d 957 (1977) 6, 7
Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985) 7, 8, 9, 10
General Dynamics Corp. v. Selb Mfg. Co., 481 F.2d 1204 (8th Cir. 1973) 9
Gmurek v. Kajader, 203 Md. 437, 101 A.2d 204 (1953) 6
Griffin v. People of the State of Illinois, 351 U.S. 12, 76 S. Ct. 585 (1956) 8
Huber v. State, 2 Md. App. 245, 234 A.2d 264 (1967) 5
Jones v. Barnes, 103 S. Ct. 3308 (1983) 8
Kemp Pontiac Cadillac, Inc. v. S&M Construction Co., 33 Md. App. 576, 365 A.2d 1021 (1976) 5, 6, 7
Lindsey v. Normet, 405 U.S. 56, 96 S. Ct. 862 (1972) 8, 9
Madore v. Baltimore County, 367 A.2d 54, 34 Md. App. 340 (1976) 12
McIntyre v. Byrne, 217 Md. 71, 141 A.2d 692 (1958) 7
McKane v. Durston, 153 U.S. 684, 14 S. Ct. 913 (1894) 8
National Ben. Life Ins. Co. v. Shaw-Walker Co., 111 F.2d 497, 71 App. D.C. 276, certiorari denied 311 U.S. 673, 61 S. Ct. 35 (1940) 12

TABLE OF AUTHORITIES—Continued

Page

National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778 (1976) 7, 9, 10
Northwestern Nat. Ins. Co. v. Samuel R. Rosoff, Ltd., 73 A.2d 461, 195 Md. 421 (1950) 11
Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74, 50 S. Ct. 228 (1930) 8
Platt v. Wilson, 62 A.2d 191 (1948) 6
Plotkin v. Pacific Tel. and Tel. Co., 688 F.2d 1291 (9th Cir. 1982) 7, 9
Prime Contractors, Inc. v. City of Baltimore, 241 Md. 54, 215 A.2d 214 (1965) 6, 9
Reetz v. Michigan, 188 U.S. 505, 23 S. Ct. 390 (1903) 8
Rogers v. Maryland National Capital Park and Planning Commission, 253 Md. 687, 253 A.2d 713 (1969) 5
Seek v. Winters, 270 Md. 715, 313 A.2d 453 (1974) 6
Silverman v. Ruddle, 234 Md. 353, 199 A.2d 196 (1964) 6
Skirven v. Skirven, 140 A.2d 205, 154 Md. 267 (1928) 11
State v. Green, 458 A.2d 487 (Md. App. 1983) 12
Sunshine Laundry Corp., et al. v. White, 197 Md. 582, 80 A.2d 1 (1957) 6
Surowitz v. Hilton Hotels Corp., 383 U.S. 363 (1966) 10
Thomassen v. U.S., 835 F.2d 727 (9th Cir. 1988) 10
The Nestle Company, Inc. v. Chester's Market, Inc. and Saccona's Toll House, Inc., 596 F.Supp. 1445 (D. Conn. 1984) 7

RULES:

Federal Rule of Civil Procedure 23 10
Maryland Rule 1028 b., i 3, 4, 5, 6, 7, 10, 11
Maryland Rule 1035 a., b 3, 4, 5, 11
Maryland Rule 828 b 6, 7
Maryland Rule 2-303 b 5

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OCTOBER TERM, 1988

No. 88-1140

ROBERT W. LUDWIG, JR.,
Petitioner,

v.

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Respondents.

On Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Originally, this was an action by an attorney (petitioner), admitted in the District of Columbia, seeking specific performance of an alleged real estate contract. Later, petitioner amended his claim to include claims for fraud and tortious interference with said contract. The petitioner signed an agreement which was never signed by the developer, Evergreen Overlook, Inc. (hereinafter Evergreen). A One Thousand Dollar ($1,000) check was given by petitioner to Evergreen. Petitioner has acknowledged that the check was never deposited or cashed by Evergreen.[1]

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[1] The following persons and entities were parties before the Maryland Court of Special Appeals: Robert W. Ludwig, Jr. (Appellant); Evergreen Overlook, Inc.; Residential Brokers, Ltd., Rocco Luppino; Judith H. Mullen, with John Cassidy, Kevin I. Gladd as substitute trustees (Appellees). Evergreen Overlook, Inc. is a Maryland Cor-

Just prior to the scheduled settlement date in April of 1986, a dispute arose regarding the cost of extras which had been added to the original building plan of the house. Evergreen offered, in the alternative, to proceed to settlement, and to escrow an amount which represented the reasonable sum in dispute at the time. The petitioner refused this offer and filed his original suit on the date scheduled for settlement. In fact, service of process was made at the place and time scheduled for settlement.

A construction loan had been secured by Evergreen to build the house. In August of 1986 the lender sought to collect on the note. To protect his credit rating and recoup equity, Mr. Luppino (this respondent) who personally guaranteed the note, resigned as president of Evergreen, paid off the loan and foreclosed on the property. It was after these actions that petitioner amended his original complaint to include counts of fraud and tortious interference with contract against respondents.

At trial, the jury found that a contract existed, and set the price of the property to include some of the extras in dispute. The trial judge ordered specific performance and directed this respondent to convey title to the petitioner upon payment of the jury-determined price by a particular date. The judge also ordered petitioner to pay Luppino a certain amount of interest which had accrued on the purchase money to the property. Additionally, the judge dismissed all of petitioner's claims alleging fraud and tortious interference of contract, finding petitioner did not present adequate admissible evidence on these claims. (See App. pp. 4a-5a, 7a-8a). Petitioner was not satisfied with the jury verdict or the judgment and Order of the Court. A motion for reconsideration was denied by the trial court. (App. p. 6a). The language in

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poration wholly owned by Ms. Mullen. Residential Brokers, Ltd. is a Virginia Corporation wholly owned by an officer of Evergreen Overlook, Inc.

the Order of Judgment and the Final Order of the trial court is strong against petitioner. (App. pp. 4a-5a, 7a-8a).

Seven issues were appealed to the Maryland Court of Special Appeals.[2]

Because petitioner did not include the multiple pleadings in its extract prepared for appeal, and because it was impossible for the court to determine what cause of action had been pled without the benefit of these, the Court of Special Appeals chose to exercise its discretionary authority and dismissed petitioner's appeal pursuant to Maryland Rule 1035 for failure to comply with Maryland Rule 1028.[3] (App. pp. 9a-10a).

Once again, petitioner was unhappy with the court's decision. A motion for reconsideration was denied (App. p. 11a), and petitioner appealed to the Maryland Court of Appeals which refused to grant a writ of certiorari stating that review was "not desirable nor in the public interest." (App. p. 12a). This brings us to the current petition for writ which is repetitive, unnecessary, and duplicative of issues already decided by lower courts and burdensome to respondents.

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[2] The seven issues appeal d were: whether there was seufficient evidence in the trial record to preclude directed verdicts denying a jury trial on the claims of (1) fraud, (2) tortious interferęnce, and (3) punitive damages. Petitioner assigned as error the trial court's application of specific performance law which resulted in (4) an award of purchase money interest to respondents; (5) denial of damages; (6) contract entitlements to petitioner; and (7) the failure to sanction respondents with costs and attorneys' fees for what petitioner claimed were litigation abuses.

[3] Petitioner claimed that respondents abused pelading procedures. However, petitioner failed to include the pleadings in their extract as evidence of such abuse.

REASONS FOR DENYING WRIT

I. THE MARYLAND COURT OF SPECIAL APPEALS DID NOT ABUSE ITS DISCRETION

No unfairness has resulted to petitioner from the decisions of state courts in this case. In fact, petitioner was afforded the principal relief sought when the trial court awarded specific performance. Petitioner sought justice through the judicial system, and received a jury trial. The jury decided that a contract existed and the price petitioner should pay.[4] Petitioner received what he initially sought—the opportunity to buy the house. Not satisfied, the petitioner exercised his right to appeal.

Even though petitioner may have had a state-created right of appeal, the Maryland Rules of Procedure set forth guidelines, interpreted strictly by Maryland Courts, which must be followed by appellants in preparing their extracts for appeal. Rule 1028 b. requires that,

> ". . . [s]o much of the . . . pleadings . . . as is material to any question or determination which depends on the sufficiency of the evidence, pleadings . . ."

shall be included in the record extract. (emphasis added). (App. p. 1a). And, Rule 1035 gives the Court of Special Appeals specific discretionary authority to dismiss an appeal on its own motion should the court determine that the extract does not comply with Rule 1028 b. (See App. pp. 1a-3a).

Despite petitioner's assertions to the contrary, the extract presented to the Court of Special Appeals did not contain sufficient material for the Court to determine if

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[4] The jury decided that $167,918.28 was a fair price for petitioner to pay. (App. pp. 4a-5a).

the trial court had acted properly with regard to the seven issues on appeal.[5]

If a court does not know what the factual allegations are, a determination on the sufficiency of the proof of these facts cannot be made. Rule 2-303 of the Maryland Rules of Civil Procedure requires the pleadings to set forth those facts necessary to show the pleader's entitlement to relief. As a rule, the allegations in the complaint must be sufficiently proven by admissible evidence. *Rogers v. Maryland National Capital Park and Planning Commission*, 253 Md. 687, 253 A.2d 713, 714 (1969); *Huber v. State*, 2 Md. App. 245, 234 A.2d 264, 274 (1967). Respondent argues, it is absolutely impossible to measure evidence in a civil action if you do not know the substance of the factual allegations.[6]

The Maryland Court of Appeals has explicitly said that it *intends* to,

> "deal summarily . . . with cases where the record extract is so inadequate or so slanted in favor of Appellant's contentions as to be seriously misleading." (Emphasis added). *Bornstein v. State Tax Commission*, 227 Md. 331, 176 A.2d 859, 861 (1962).

The discretionary nature of Rule 1035 was discussed by the Maryland Court of Special Appeals in *Kemp Pontiac Cadillac, Inc. v. S&M Construction Co.*, 33 Md. App.

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[5] Petitioner contends that the only paper mandated by Rule 1028 b. to be included in an extract is the judgment and charge of the court below. Because Petitioner included these plus other pertinent testimony, and since no issue of sufficiency of the pleadings was raised during litigation, petitioner contends that the pleadings were not necessary or material to a decision on the issues on appeal.

[6] Petitioner argued before the Court of Special Appeals that sufficiency of the evidence questions are measured against legal elements of the particular claim, under Maryland law, not against the pleadings. But, petitioner confused the court when it claimed that respondents fraudulently induced him to enter a contract on one hand and questioned the existence of a contract on the other.

576, 365 A.2d 1021 (1976). Judge Digges commented on Rule 828 b.1 whose language is identical to Rule 1028 b. and stated:

> "The cases are in legion in this Court in support of our authority not to decide issues not presented in conformity with this rule." *Caroline v. Reicher*, 269 Md. 125, 304 A.2d 831, 837 (1973).

See also, *Seek v. Winters*, 270 Md. 715, 313 A.2d 453 (1974); *A.S. Abell Co. v. Skeen*, 265 Md. 53, 288 A.2d 596 (1972).[7]

Moreover, the Court of Special Appeals clearly expressed in *Eldwick Homes Assn., Inc. v. Pitt*, 36 Md. App. 211, 373 A.2d 957 (1977), that "the Court is not required to dig through the record to find those materials which counsel should have printed in the record abstract." *Id.* at 958. Petitioner argues that it was significant that the pleadings were contained in the record before the Court. *Eldwick* clearly refutes this contention.

It is absolutely insignificant that no reported Maryland decision has ever explicitly required that pleadings be included in the extract for an appeal. Maryland Courts have warned repeatedly (with regard to Rule 1028 b.) that appellants must print in the appendix *all* that the court has to have before it, if they expect the court to decide an issue, or a dismissal can result. *Sunshine Laundry Corp. v. White*, 197 Md. 582, 90 A.2d 1 (1957);

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[7] Maryland Courts, when making decisions regarding rules almost identical in tone to Rule 1028 b., have said that it is the appellant's duty to print in the appendix *all* materials needed by a court to decide whether or not an issue existed for submission to a jury. These courts have all said that *all* material is *not* presented when the appellant reproduces in the appendix only what is favorable to his argument, and ignores material that militates against him. *Gmurek v. Kajader*, 203 Md. 437, 101 A.2d 204, 206 (1953); *Prime Contractors, Inc. v. City of Baltimore*, 241 Md. 54, 215 A.2d 214 (1965); *Silverman v. Ruddle*, 234 Md. 353, 199 A.2d 196 (1964); *Platt v. Wilson*, 62 A.2d 191 (1948).

Kemp Pontiac Cadillac, supra; Eldwick Homes Assn., supra; Bornstein, supra.

As Judge Prescott, later Chief Judge of the Maryland Court of Appeals, said of counterpart Rule 828:

> "This rule is clear, definite and certain; there is little excuse for having an attorney's compliance therewith questioned." *McIntyre v. Byrne*, 217 Md. 71, 74, 141 A.2d 692, 693 (1958).

See also, *Kemp Pontiac Cadillac* at 365 A.2d 1022.

Even this Court has recognized that the extreme sanction of dismissal by lower courts is justified when clear, procedural rules are ignored and, in fact, stated,

> ". . . must be available . . . in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S. Ct. 2778 (1976).

See also, *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830 (1985); *Ackerman v. U.S.*, 340 U.S. 193, 198, 71 S. Ct. 209, 211 (1950).

The Ninth Circuit holds that it is not enough to show that grant of a motion to set aside summary dismissal may have been permissible. The decision to deny a motion for reconsideration must have been unwarranted to equal abuse of discretion. *Plotkin v. Pacific Tel. and Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982). See also, *The Nestle Company, Inc. v. Chester's Market, Inc. and Saccone's Toll House, Inc.*, 596 F. Supp. 1445, 1450-51, (D. Conn. 1984).

It is not unconscionable nor is it inconsistent with federal due process and/or equal protection standards established by this Court that the Maryland Courts dismissed petitioner's claims on appeal for failure to comply with a rule so clear as Rule 1028—A Rule made even more clear by explicit holdings of the Maryland Courts, and

not refuted by federal authority. No discretion was abused by the Maryland Court of Special Appeals or any other Maryland Court acting in the face of such clear authority.

II. THE MARYLAND COURT OF SPECIAL APPEALS DID NOT VIOLATE THE DUE PROCESS OR THE EQUAL PROTECTION CLAUSES OF THE CONSTITUTION BY DISMISSING PETITIONER'S APPEAL

It is true that when a state opts to act in a field where its action has discretionary elements, it must act in accord with the dictates of the Constitution. *Evitts* at 401. See also, *Lindsey v. Normet*, 405 U.S. 56, 92 S. Ct. 862 (1972). However, this Court has consistently held:

> "The right of appeal may be accorded by the state . . . upon such terms as in its wisdom may be deemed proper." *McKane v. Durston*, 153 U.S. 684, 687-688, 14 S. Ct. 913, 914-915 (1894); *Griffin v. Illinois*, 351 U.S. 12, 18, 76 S. Ct. 585, 590 (1956).

Furthermore, this Court has specifically stated:

> "The right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance." *Ohio ex. rel. Bryant v. Akron Metropolitan Park District*, 281 U.S. 74, 80, 50 S. Ct. 228, 230 (1930); *McKane, supra.*

In other words, if a full and fair trial is provided, this Court holds that the Constitution does not require a state to provide appellate review at all. *Jones v. Barnes*, 103 S. Ct. 3308, 3312 (1983); *Lindsey* at 876; *Griffin* at 18; *Evitts* at 400.[8]

The bottom line is that a full and fair trial on the merits has been provided on all issues to this litigation,

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[8] See also, *District of Columbia v. Clawans*, 300 U.S. 617, 627, 57 S. Ct. 660, 664 (1937); *Ohio ex rel. Bryant* at 80; *Reetz v. Michigan*, 188 U.S. 505, 508, 23 S. Ct. 390, 392 (1903); *McKane* at 687-688. The *Lindsey Court* specifically confirmed the validity of this principle and the similar holding in each of these earlier cases.

and a rehashing of any of the issues in this case is unnecessary and duplicative. But, petitioner continues to cloud title to the property through needless appeals. Indeed, the Maryland Court of Appeals dismissed petitioner's appeal as "not desirable nor in the public interest." (App. p. 12a).

Petitioner concedes that federal courts have upheld the extreme sanction of dismissal in cases based on violations of procedural rules. *National Hockey League, supra.* See also, *Ackerman v. U.S.*, 340 U.S. 193, 71 S. Ct. 209, (1950); *Plotkin, supra; General Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1211 (8th Cir. 1973). Specifically, where "bad faith" in failing to follow a rule is apparent, this Court has upheld dismissal of the appeal. Indeed, this Court has said that such a sanction "must be available." *National Hockey League* at 643.

Maryland Courts have been clear in their interpretation of the applicable state rules. The Maryland Court of Special Appeals has set an example by repeatedly dismissing appeals where appellants' record extracts were "patently insufficient for a determination of the questions raised." *Prime Contractors, Inc.*, at 216 (citation omitted). And, the Maryland Court of Appeals emphatically warned in *Bornstein* that ". . . drastic action might result if omissions on the part of appellant were deliberate and intended to violate or evade the rule, even where the material is supplied." *Bornstein* at 1026.

To illustrate his theory that the present case presents a constitutional violation, petitioner cites cases where this Court decided the equal protection clause was violated because criminal, indigent defendants were subjected to state procedural rules which distinguished between rich and poor and, thus, left indigent defendants at a disadvantage on appeal. *Evitts v. Lucey, supra; Lindsey v. Normet, supra.* No such set of facts exists in the present action. Furthermore, this Court in *Evitts* clearly recognized,

> "if a state chooses to dismiss an appeal when an . . . attorney has violated local rules, it may do so, if such action does not intrude on clients due process rights." *Evitts* at 399.

Petitioner also looks to decisions of this Court with regard to the Federal Rules of Civil Procedure (F.R.C.P.) as a guide in the present action. In so doing, petitioner recognizes that this court has upheld dismissals for non-compliance with federal procedural rules. *National Hockey League, supra.* See also, *Ackerman, supra.*[9] Furthermore, the instant issue is application of state-created right of appeal and state-created rules in compliance therewith. Federally-created right of appeal and the F.R.C.P. is a separate and distinct area of law.

Moreover, Justice Rehnquist pointed out in *Evitts*:

> "This Court's decisions have *not* imposed *any* procedural requirements on state appeals other than to bar procedures that operate to accord indigents a narrower scope of appellate review than non-indigents." (Rehnquist, J., dissenting) (emphasis added), *Evitts* at 406-407.

And, the Ninth Circuit upheld a dismissal even where the procedural error was committed by the court and not the appellant. *Thomassen v. U.S.*, 835 F.2d 727 (9th Cir. 1988).

In reviewing this case, the Maryland Court of Special Appeals held that Maryland Rule 1028 b.1 directs peti-

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[9] In one F.R.C.P. case cited by petitioner, this court recognized that the record showed evidence of fraud perpetrated by a large corporation on a little old lady who held her life savings in stock with the corporation. This court refused to uphold dismissal pursuant to F.R.C.P. 23 for her failure to verify with full knowledge what she had pled in her complaint. *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 383 (1966). In the present case, no evidence of fraud exists. It is clear that this respondent resigned as president of Evergreen and foreclosed on the property only to save his credit rating and to recoup the equity he had placed in the property by personally signing the construction note. The trial court's decision on these matters is just and should not be questioned. (See App. pp. 4a-8a).

tioners to include in the extract such parts of the record as may be reasonably necessary for the determination of questions presented on apeal. (See App. p. 9a).

Further, it pointed out that it was merely exercising the discretionary authority conferred on it by Rule 1028 i.2, which specifically allows the Court to dismiss an appeal which violates section b of the rule. (See App. p. 10a).

Section i.3 of the same rule confers upon the court the power to order that the printed extract be corrected when it deems appropriate. (App. p. 2a). It is obvious that this section of the rule is also *discretionary*. The Court is not required to exercise that authority. It is clear that the Court of Special Appeals either felt that the omission in the present case was not inadvertent, or it was not willing to take the risk that prejudice might result to respondents in the absence of review of the complicated pleadings of this case. It could be that the Court of Special Appeals wanted to avoid further time and expense on this matter in light of the strong language used by the trial court. (See App. pp. 4a-8a, 9a-10a). By the provisions of Rules 1028 i.2 and 3 and Rule 1035, it was the Court's prerogative to dismiss. (See App. pp. 1a-3a; 9a-10a).

The *Golden Rule* of appellate review is, simply stated, an appellate court will not challenge the decision of a lower court in the absence of an abuse of discretion. *Skirven v. Skirven*, 140 A.2d 205, 154 Md. 267 (1928). Indeed, the Maryland Court of Appeals has consistently held that,

> "Questions within the discretion of trial court are much better decided by that court than by appellate courts, and decisions of trial judges will only be disturbed where it is apparent that some serious error or abuse of discretion . . . has occurred." *Northwestern Nat. Ins. Co. v. Samuel R. Rosoff, Ltd.*, 73 A.2d 461, 195 Md. 421 (1950). See also, *B&K Ren-*

tal & Sales Co., Inc. v. Universal Leaf Tobacco Co., et al, 535 A.2d 492, 496, 73 Md. App. 530 (1988).

The Maryland Court of Special Appeals follows the principle that,

> "Discretion with which all courts determine whether good cause has or has not been shown for noncompliance is broad and involves one of the most important judicial functions; ruling made in exercise of that discretion is entitled to utmost respect and should not be overturned by an appellate court unless there is clear showing that discretion was abused . . ." *Madore v. Baltimore County*, 367 A.2d 54, 34 Md. App. 340 (1976). See also, *State v. Green*, 458 A.2d 487, 490 (Md. App. 1983).

This Court, too, follows this rule of respect, and has affirmed that a trial court's discretionary decision will only be disturbed if the decision is *arbitrary*. The D.C. Circuit held that a decision is arbitrary only if exercised for an erroneous reason, and this Court denied certiorari. *National Ben. Life Ins. Co. v. Shaw-Walker Co.*, 111 F.2d 497, 71 App. D.C. 276, certiorari denied 61 S. Ct. 35, 331 U.S. 673 (1940). Petitioner's claims were dismissed pursuant to a rule backed up by a string of decisions of Maryland Courts not refuted by federal courts—clearly not arbitrary.

There was no error of discretion by the trial court in dismissing non-meritorious claims of petitioner. Nor was there abuse of discretion by the Court of Special Appeals in dismissing petitioner's appeal pursuant to state authority and not contrary to federal authority. Likewise, the Maryland Court of Appeals was not out of line to dismiss petitioner's claims.

There is no due process issue present in the instant appeal. The Constitution does not provide the absolute right to an appeal, and even if there is a state-created right to an appeal for appellants in Maryland, in no way

did the Maryland Courts abuse their discretion in reviewing the facts of this case. With the absence of abuse of discretion by the lower state courts which have considered the issues present, there is no constitutional violation. The trial court rendered a fair decision in this case. Trial by jury has been had and justice has been served. Any other decision by any other court would be unfair.

CONCLUSION

This case is not properly before this Honorable Court, thus, no writ of certiorari should be granted.

Respectfully submitted,

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Dated: February 9, 1989

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APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Rules Involved	1a
Order of Judgment of Judge Bowen of Circuit Court of Prince George's County dated August 26, 1987	4a
Order of Judge Bowen Denying petitioner's Motion for Reconsideration dated August 26, 1987	6a
Final Order of Judge Melbourne of Circuit Court of Prince George's County Denying Petitioner's renewed Motion to Revise Judgment	7a
Opinion of Court of Special Appeals of Maryland Ordering Dismissal of Petitioner's Appeal dated May 20, 1988	9a
Mandate of Court of Special Appeals, dated June 21, 1988, Indicating Unwritten Order Denying Petitioner's Motion for Reconsideration, dated June 17, 1988	11a
Order of Court of Appeals of Maryland Denying Petitioner's Petition for Writ of Certiorari, dated October 11, 1988	12a

APPENDIX

RULES INVOLVED

Rules 1028 and 1035 of the Maryland Rules of Procedure provide in pertinent part:

Rule 1028. Printed Record Extract in Civil Cases.

a. Appellant to Print.

In civil cases, unless a statement is filed pursuant to Rule 1029 b or unless otherwise ordered by this Court, the appellant shall cause to be printed, either as a separate volume or as an appendix to his brief, extracts of the record which shall include the parts thereof provided for by section b of this Rule arranged in the order in which the same appear in the record. . . .

b. Contents.

1. What to be Included.

The printed extract shall contain such parts of the record as may reasonably be necessary for the determination of the questions presented by the appeal, and shall include:

(a) The judgment appealed from, together with the opinion or charge of the lower court, if any.

(b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

(c) Such other parts of the record as may be designated by the parties pursuant to section c. of this Rule.

. . .

i. Penalties—Correction.

1. Violation of Section a.

For violation of section a. of this Rule this Court may dismiss the appeal, or make any other appropriate order with respect to the case, including an order that an improperly printed appendix or printed extract be reprinted at the expense of the counsel for the party whose appendix or printed extract was improperly printed.

2. Violation of Section b.

For violation of section b. of this Rule this Court may require that additional portion of the record be printed or otherwise furnished, or it may dismiss the appeal, or make any other appropriate order with respect to the case.

3. Inadvertent Errors.

Inadvertent omissions or misstatements in the printed extract or in any appendix may be corrected by direction of this Court on application or of its own motion.

Rule 1035. Dismissal of Appeal.

a. By the Court.

1. From Pro Forma Orders.

. . .

2. Any Other Cause.

This Court may, on its own motion, dismiss an appeal for any cause set forth in section b of this Rule.

b. On Motion.

On motion filed by any party, an appeal may be dismissed for any of the following reasons:

. . .

5. The contents of the printed record extract do not comply with section b. of Rule 1028 (Printed Record Extract in Civil Cases).

. . .

Rule 2-303 of the Maryland Rules of Procedure provides in pertinent part:

Rule 2-303. Form of Pleadings.

b. Contents.

Each averment of pleading shall be simple, concise, and direct . . . A pleading shall contain . . . such statements of fact as may be necessary to show the pleader's entitlement to relief. . .

IN THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY, MARYLAND

Case No. CAE 86-06873

ROBERT W. LUDWIG, JR.,
Plaintiff

vs.

EVERGREEN OVERLOOK, INC., *et al.*,
Defendants

ORDER

UPON CONSIDERATION, of the testimony and evidence at the trial of this case, and the jury verdict on special issues, it is by the Circuit Court for Prince George's County, this 26th day of August, 1987.

ORDERED, that the Motions for Judgment by the defendants Mullen and Residential Brokers, be granted, and it is further,

ORDERED, that Judgment be, and it is hereby, entered in favor of the defendants Mullen, Residential Brokers, Cassidy & Gladd against the Plaintiff, Robert W. Ludwig, Jr., and it is further,

ORDERED, that the defendant which has legal title to the property known as Lot 7, Alexandria Overlook, Prince George's County, Maryland be, and is hereby, Ordered and directed to convey title to Robert W. Ludwig, Jr., upon payment by Robert W. Ludwig, Jr., to that defendant, the sum of $167,918.28, and it is further,

ORDERED, that Judgment be, and it is hereby, entered in favor of the defendant, conveying title, for interest at the legal rate on the $167,918.28 from May 1,

1986 to the date of settlement on this property, and it is further,

ORDERED, that Plaintiff's Motion for costs and counsel fees be, and it is hereby, denied, and it is further,

ORDERED, that Robert W. Ludwig, Jr. settle on this parcel of real estate, on or before August 31, 1987.

PERRY G. BOWEN
Judge

IN THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY, MARYLAND

Case No. CAE 86-06873

ROBERT W. LUDWIG, JR.,
Plaintiff

vs.

EVERGREEN OVERLOOK, INC., *et al.*,
Defendants

ORDER

UPON CONSIDERATION of the Motion for Reconsideration filed herein and the Opposition thereto, it is by the Circuit Court for Prince George's County, this 26th day of August, 1987,

ORDERED that the Motion be and hereby is DENIED.

PERRY G. BOWEN
Judge
Circuit Court
Prince George's County, Md.

IN THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY, MARYLAND

Case No. CAE 86-06873

ROBERT W. LUDWIG, JR.,
Plaintiff

vs.

ROCO LUPPINO, *et al.*,
Defendants

FINAL ORDER

Upon consideration of Plaintiff's Renewed Motion to Revise Judgment, it is this 30th day of December, 1988, by the Circuit Court for Prince George's County, Maryland.

ORDERED, that Plaintiff's Renewed Motion to Revise Judgment be, and hereby is, denied for lack of jurisdiction, and it is further,

ORDERED, that final judgment be, and hereby is, entered in favor of the Defendant, Rocco Luppino, against the Plaintiff, Robert W. Ludwig, Jr. for interest and costs, and it is further,

ORDERED, that a monetary judgment be entered against Robert W. Ludwig, Jr., in favor of the Defendant, Rocco Luppino in the amount fo $39,786.48, which reflects interests and costs due to and through December 9, 1988. (The gross amount of $45,936.38 was reduced by a credit of $6,150.00 for rent received), and it is further,

ORDERED, that this judgment will continue to accrue interest at the legal rate until settlement on the property, and it is further,

ORDERED, that the Plaintiff, Robert W. Ludwig, Jr., has forfeited any right to purchase the property located at 17 East Alexandria Drive, Oxon Hill, Maryland, and Rocco Luppino may sell, transfer, or convey the real property free of any lien, or claimed lien, of Robert W. Ludwig, Jr.

/s/ Audrey Melbourne
Judge

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1515

September Term, 1987

ROBERT W. LUDWIG, JR.

v.

EVERGREEN OVERLOOK, INC., *et al.*

Gilbert, C.J.
Bloom,
Smith, Maarvin H. (Retired,
specially assigned),

JJ.

PER CURIAM

Filed: May 20, 1988

Pursuant to Md. Rule 1035 a. 2 and b.5, we dismiss the appeal of Ludwig v. Evergreen Overlook, Inc., et al. We exercise the prerogative conferred upon us by Md. Rule 1028 i. 2, because the record extract required by Rule 1028 fails to include any of the pleadings in the action begun in the Circuit Court for Prince George's County.

Maryland Rule 1028 b. 1 provides:

> "The printed extract shall contain such parts of the record as may reasonably be necessary for the determination of the questions presented by the appeal, and shall include:

(a) The judgment appealed from, together with the opinion or charge of the lower court, if any.

(b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

(c) Such other parts of the record as may be designated by the parties pursuant to section c. of this Rule."

Ludwig contends that the trial court erred in dismissing his claims for damages for fraud and tortious interference with a contract. Further, he claims punitive damages.

The record extract is devoid of the pleadings necessary for us to review the trial court's actions. In his brief, Ludwig refers to a complaint, an amended complaint, a supplement to the amended complaint, a second supplement to the amended complaint, as well as the appellees' answers to each. None of those writings are included in the record extract. Hence, the extract provides us with nothing to review. We have previously stated in Eldwick Homes Association, Inc. v. Pitt, 36 Md. App. 211, 212 (1977). "[W]e are not required to ferret out from the record those materials which counsel should have printed in the abstract." We reiterate what we said in Eldwick, and accordingly we dismiss the appeal.

APPEAL DISMISSED.
COSTS TO BE PAID BY APPELLANT

MANDATE

COURT OF SPECIAL APPEALS

No. 1515, September Term, 1987

ROBERT W. LUDWIG, JR.

v.

EVERGREEN OVERLOOK, INC., *et al.*

JUDGMENT: May 20, 1988: Per Curiam filed. Appeal dismissed. Costs to be paid by appellant.

June 15, 1988: Motion for Reconsideration filed by counsel for the appellant. June 17, 1988: Motion for Reconsideration denied.

June 21, 1988: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for Prince George's County CAE86-06873

Record	40.00
Stenographer Costs	1342.25
Total	1382.25*
In Court of Special Appeals:	
Filing Record on Appeal	50.00
Printing Brief for Appellant	187.20
Reply Brief	312.00
Portion of Record Extract-Appellant	2241.60
Total	2790.80*
Printing Brief for Appellee	153.60
Portion of Record Extract-Appellee	19.20
Printing Brief for Appellee Mullen & Evergreen	134.40
Total	307.20

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 240

September Term, 1988

(No. 1515, September Term,
1987 Court of Special Appeals)

ROBERT W. LUDWIG, JR.

v.

EVERGREEN OVERLOOK, INC., *et al.*

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: October 11, 1988